IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8878 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHWIN K RAVAL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 8878 of 2002
MR MIHIR H JOSHI for Petitioner No. 1
MR DN PATEL, Senior Central Govt.Standing Counsel for Respondents.

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 Rule. Service of Rule is waived by Mr.D.N.Patel, Senior Central Govt. Standing Counsel for the respondents. At the request of the learned Advocates the petition is finally heard today.

2 Mr.Mihir Joshi, learned Advocate appearing for the petitioner has submitted that the petitioner is an owner of Shed bearing No.A-8 situated at Plot No.83, Shri Raghuvir Estate, Aslali, Ahmedabad. The said Shed had been leased to M/s.Deep Enterprise (Overseas) Mumbai on 6.4.1999 for a period of three years. It is the case of the petitioner that lessee M/s.Deep Enterprise (Overseas) Mumbai is not doing business at the Shed which has been leased to it and the lessee has also not paid rent to the petitioner.

3 It has been submitted by learned Advocate for the petitioner that the Shed which had been leased to M/s.Deep Enterprise (Overseas) Mumbai has been sealed by the respondent authorities on 21.09.2000, possibly because the lessee has committed some default or has not paid amount payable by it to the respondent authorities. As the petitioner was not getting rent from the lessee and was also not getting possession of the leased shed, the petitioner had approached the respondent authorities on several occasions with a request to open the seal so that he can take possession of the Shed owned by him.

4 As the seal had not been opened, the petitioner is deprived of his Shed and therefore he has approached this Court with a prayer that the respondent authorities be directed to open the seal so that he can take possession of the Shed in question.

5 In pursuance of the notice issued by this Court, Mr.D.N.Patel, learned Senior Central Government Standing Counsel has appeared on behalf of the respondents and has submitted that M/s. Deep Enterprise (Overseas) Mumbai has committed several defaults under the Customs Act,1962 and has not made payment of the amount payable to the respondent authorities and in the circumstances, the Shed in question has been sealed by the respondent authorities. It has been submitted by him that inspite of several notices and summons being issued to M/s.Deep Enterprise (Overseas) Mumbai, Proprietor of the said business unit has not made payment of the amount payable to the respondent authorities and in the circumstances the said Shed, where the lessee was doing its business,

had been sealed.

6 We have heard the learned Advocates and looking to the facts of the case, in our opinion, it is not proper on the part of the respondent authorities to retain a Shed which is owned by the petitioner. In our opinion, if the lessee is a defaulter and is not making payment to the respondent authorities, appropriate action can be taken against the said lessee. If it is open to the respondent authorities to take possession of the belongings of the lessee, the respondent authorities may open the seal and take possession of the belongings of the lessee who is a defaulter but the respondent authorities cannot retain possession of the Shed in question which admittedly belongs to the petitioner. Looking to the facts and circumstances of the case, it is directed that the respondent authorities shall remove the seal and hand over possession of the Shed in question to the petitioner on or before 4.10.2002. Needless to say that it would be open to the respondent authorities to take possession of the belongings of the lessee, who is a defaulter, in accordance with law.

7 The petition is thus allowed. Rule made absolute with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt